S T A T E O F N E W Y O R K

S. 5473 A. 7931

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

May 25, 2011

IN SENATE -- Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

IN ASSEMBLY -- Introduced by M. of A. AUBRY -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, the domestic relations law, the family court act and the criminal procedure law, in relation to child support obligations of inmates; and to amend section 13 of chapter 182 of the laws of 2010 amending the tax law, the family court act, the domestic relations law and the social services law relating to the modification of child support orders, employer reporting of new hires and quarterly earnings, work programs and the noncustodial earned income tax credit, in relation to the effectiveness of certain provisions thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The correction law is amended by adding a new section 149-a to read as follows:

S 149-A. NOTIFICATION TO INMATES OF THEIR ABILITY TO SEEK MODIFICATIONS OF AN ORDER OF CHILD SUPPORT. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE DEPARTMENT SHALL NOTIFY ALL INMATES RESIDING IN A CORRECTIONAL FACILITY WITHIN THE STATE OF NEW YORK OF THE POSSIBILITY THAT THEY MAY BE ABLE TO MODIFY AN EXISTING CHILD SUPPORT ORDER BASED ON A "SUBSTANTIAL CHANGE IN CIRCUMSTANCES" IN ACCORDANCE WITH SECTION TWO HUNDRED THIRTY-SIX OF THE DOMESTIC RELATIONS LAW AND SECTION FOUR HUNDRED FIFTY-ONE OF THE FAMILY COURT ACT.

S 2. Paragraphs (d), (g) and (i) of subdivision 1-b of section 240 of the domestic relations law, paragraphs (d) and (i) as added by chapter 567 of the laws of 1989 and paragraph (g) as amended by chapter 41 of the laws of 1992, are amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(d) Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount for a single person as reported by the federal department of health and human services[, the basic child support obligation shall be twenty-five dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater], OR IF THE COURT FINDS THAT SUCH BASIC CHILD SUPPORT OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDERATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F) OF THIS SUBDIVISION, THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY SUCH AMOUNT OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND APPROPRIATE. Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the self-support reserve but not below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be fifty dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater, IN ADDITION TO ANY AMOUNTS THAT THE COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH SUBPARAGRAPHS FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS SUBDIVISION.

(g) Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the non-custodial parent to pay such amount of child support as the court finds just and appropriate, and the court shall set forth, in a written order, the factors it considered; the amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child support obligation. Such written order may not be waived by either party or counsel; provided, however, and notwithstanding any other provision of law, the court shall not find that the non-custodial parent's pro rata share of such obligation is unjust or inappropriate on the basis that such share exceeds the portion of a public assistance grant which is attributable to a child or children. [In no instance shall the court order child support below twenty-five dollars per month.] Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue.

(i) Where either or both parties are unrepresented, the court shall not enter an order or judgment other than a temporary order pursuant to section two hundred thirty-seven of this article, that includes a provision for child support unless the unrepresented party or parties have received a copy of the child support standards chart promulgated by the commissioner of [social services] THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE pursuant to subdivision two of section one hundred eleven-i of the social services law. Where either party is in receipt of child support enforcement services through the local social services district, the local social services district child support enforcement unit shall advise such party of the amount derived from application of the child support percentage and that such amount serves as a starting point for the determination of the child support award, and shall provide such party with a copy of the child support standards chart. [In no instance shall the court approve any voluntary support agreement or

compromise that includes an amount for child support less than twenty-five dollars per month.]

S 3. Paragraphs (d), (g) and (i) of subdivision 1 of section 413 of the family court act, paragraphs (d) and (i) as amended by chapter 567 of the laws of 1989 and paragraph (g) as amended by chapter 41 of the laws of 1992, are amended to read as follows:

(d) Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, [the basic child support obligation shall be twenty-five dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater]OR IF THE COURT FINDS THAT SUCH BASIC CHILD SUPPORT OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDERATIONS OF THE FACTORS SET FORTH IN PARAGRAPH (F) OF THIS SUBDIVISION, THEN THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY SUCH AMOUNT OF THE CHILD SUPPORT AS THE COURT FINDS JUST AND APPROPRIATE. Notwithstanding the provisions of paragraph (c) of this subdivision, where the annual amount of the basic child support obligation would reduce the non-custodial parent's income below the self-support reserve but not below the poverty income guidelines amount for a single person as reported by the federal department of health and human services, the basic child support obligation shall be fifty dollars per month or the difference between the non-custodial parent's income and the self-support reserve, whichever is greater, IN ADDITION TO ANY AMOUNTS THAT THE COURT MAY, IN ITS DISCRETION, ORDER IN ACCORDANCE WITH SUBPARAGRAPHS FOUR, FIVE, SIX AND/OR SEVEN OF PARAGRAPH (C) OF THIS SUBDIVISION.

(g) Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the non-custodial parent to pay such amount of child support as the court finds just and appropriate, and the court shall set forth, in a written order, the factors it considered; the amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child support obligation. Such written order may not be waived by either party or counsel; provided, however, and notwithstanding any other provision of law, including but not limited to section four hundred fifteen of this [act] PART, the court shall not find that the non-custodial parent's pro rata share of such obligation is unjust or inappropriate on the basis that such share exceeds the portion of a public assistance grant which is attributable to a child or children. [In no instance shall the court order child support below twenty-five dollars per month.] Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue.

(i) Where either or both parties are unrepresented, the court shall not enter an order or judgment other than a temporary order pursuant to section two hundred thirty-seven of [this article] THE DOMESTIC RELATIONS LAW, that includes a provision for child support unless the unrepresented party or parties have received a copy of the child support standards chart promulgated by the commissioner of [social services] THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE pursuant to subdivision two of section one hundred eleven-i of the social services law. Where either party is in receipt of child support enforcement services through

the local social services district, the local social services district child support enforcement unit shall advise such party of the amount derived from application of the child support percentage and that such amount serves as a starting point for the determination of the child support award, and shall provide such party with a copy of the child support standards chart. [In no instance shall the court approve any voluntary support agreement or compromise that includes an amount for child support less than twenty-five dollars per month.]

S 4. Subdivision 1 of section 390.30 of the criminal procedure law is amended to read as follows:

1. The investigation. The pre-sentence investigation consists of the gathering of information with respect to the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, and the defendant's social history, employment history, family situation, economic status, INCLUDING CHILD SUPPORT OBLIGATIONS, education, and personal habits. Such investigation may also include any other matter which the agency conducting the investigation deems relevant to the question of sentence, and must include any matter the court directs to be included.

S 5. Subdivision 9 of part B of section 236 of the domestic relations law is amended by adding a new paragraph e to read as follows:

E. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, UPON AN APPLICATION FOR A MODIFICATION OF CHILD SUPPORT PURSUANT TO THIS SUBDIVISION, THE COURT IN ITS DISCRETION, MAY ISSUE AN ORDER DIRECTING THAT AN ORDER FOR PAYMENT OF CHILD SUPPORT BE STAYED FOR A PERIOD OF UP TO ONE HUNDRED EIGHTY DAYS FOLLOWING THE RELEASE OF A NON-CUSTODIAL PARENT FROM A PERIOD OF INCARCERATION. ARREARS SHALL ACCRUE DURING SUCH PERIOD. THE ORIGINAL ORDER, OR ANY MODIFIED ORDER SHALL BE ENFORCEABLE AT THE END OF SUCH STAY.

S 6. Section 13 of chapter 182 of the laws of 2010 amending the tax law, the family court act, the domestic relations law and the social services law relating to the modification of child support orders, employer reporting of new hires and quarterly earnings, work programs and the noncustodial earned income tax credit is amended to read as follows:

S 13. This act shall take effect on the ninetieth day after it shall have become law; provided however, that sections six and seven of this act shall apply to any action or proceeding to modify any order of child support entered on or after the effective date of this act except that if the child support order incorporated without merging a valid agreement or stipulation of the parties, the amendments regarding the modification of a child support order set forth in sections six and seven of this act shall only apply if the incorporated agreement or stipulation was executed on or after this act's effective date, AND EXCEPT THAT SECTIONS SIX AND SEVEN OF THIS ACT SHALL APPLY TO ANY ACTION OR PROCEEDING TO MODIFY A CHILD SUPPORT ORDER ENTERED AGAINST ANY PERSON WHO IS AN INMATE IN A CORRECTIONAL FACILITY IN THIS STATE WHOSE INCARCERATION BEGAN PRIOR TO THE EFFECTIVE DATE OF THIS ACT; provided however, that sections three and four of this act shall take effect on the three hundred sixty-fifth day after it shall have become a law.

S 7. This act shall take effect on the ninetieth day after it shall have become a law.